

## BEFORE THE ARIZONA CORPORATION COMMISSION

UTILITIES DIVISION STAFF,

Complainant,

vs.

WIRENET OF ARIZONA, LLC;  
PHONE COMPANY MANAGEMENT  
P, LLC; THE PHONE COMPANY  
RIZONA JOINT VENTURE dba  
PHONE COMPANY OF ARIZONA;  
SYSTEMS TECHNOLOGY, LLC,  
its principals, TIM  
HERALD, FRANK TRICAMO AND  
DAVID STAFFORD; THE PHONE  
COMPANY OF ARIZONA, LLP and  
its members,

DOCKET NOS.:  
T-03889A-02-0796  
T-04125A-02-0796  
T-04125A-02-0577  
T-03889A-02-0578  
T-03889A-03-0152  
T-03889A-03-0202

Arizona Corporation Commission  
**DOCKETED**

FEB 18 2004

DOCKETED BY

At: Phoenix, Arizona

Date: February 2, 2004

Filed: FEB 18 2004

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REPORTER'S TRANSCRIPT OF PROCEEDINGS  
VOLUME II  
12 through 230, inclusive.)

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## BEFORE THE ARIZONA CORPORATION COMMISSION

UTILITIES DIVISION STAFF,

Complainant,

vs.

LIVWIRENET OF ARIZONA, LLC;  
THE PHONE COMPANY MANAGEMENT  
GROUP, LLC; THE PHONE COMPANY  
OF ARIZONA JOINT VENTURE dba  
THE PHONE COMPANY OF ARIZONA;  
ON SYSTEMS TECHNOLOGY, LLC,  
and its principals, TIM  
WETHERALD, FRANK TRICAMO AND  
DAVID STAFFORD; THE PHONE  
COMPANY OF ARIZONA, LLP and  
its members,

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Respondents.

AND OTHER RELATED MATTERS.

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THE PHONE COMPANY OF ARIZONA; )

ON SYSTEMS TECHNOLOGY, LLC, )

and its principals, TIM )

WETHERALD, FRANK TRICAMO AND )

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COMPANY OF ARIZONA, LLP and )

its members, )

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&  
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1 BE IT REMEMBERED that the above-entitled and  
2 numbered matter came on regularly to be heard before the  
3 Arizona Corporation Commission, in Hearing Room 1 of said  
4 Commission, 1200 West Washington Street, Phoenix, Arizona,  
5 commencing at 9:15 a.m. on the 2nd of February, 2004.

6  
7 BEFORE: PHILIP J. DION, III, Administrative Law Judge

8  
9 APPEARANCES:

10 For the Complainant:

11 Ms. Maureen A. Scott  
12 Staff Attorney, Legal Division  
13 1200 West Washington Street  
Phoenix, Arizona 85007-2927

14 For the Respondent The Phone Company of Arizona, LLP:

15 SNELL & WILMER, L.L.P.  
16 By Mr. Jeffrey W. Crockett  
17 One Arizona Center  
400 East Van Buren  
18 Phoenix, Arizona 85004  
(Via teleconference)

19 For the Respondents LiveWireNet of Arizona, LLC; The Phone  
20 Company Management Group, LLC; Tim Wetherald; On Systems  
Technology:

21 Mr. Tim Wetherald  
22 In propria persona  
3025 South Parker Road, Suite 1000  
23 Aurora, CO 80014  
(Via teleconference)

## 1 APPEARANCES:

2 For the Respondent David Stafford Johnson:

3 Mr. David Stafford Johnson  
4 In propria persona  
5 740 Gilpin Street  
6 Denver, CO 80218  
(Via teleconference)

7 For the Respondent Frank Tricamo

8 Mr. Frank Tricamo  
9 In propria persona  
6888 South Yukon Court  
Littleton, CO 80128  
(Via teleconference)

11 For Qwest Corporation:

12 FENNEMORE CRAIG  
13 By Ms. Theresa Dwyer  
3003 North Central Avenue, Suite 2600  
Phoenix, Arizona 85012

15  
16 COLETTE E. ROSS  
17 Certified Court Reporter  
Certificate No. 50658

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ALJ DION: Good morning, everyone, and welcome to the Arizona Corporation Commission. My name is Phil Dion and I will be presiding over the various dockets in this case. I will go ahead and just name the first one, T-03889A-02-0796, et al.

This involves a number of cases but the primary one is a complaint filed by the Utilities Division Staff of the Arizona Corporation Commission against LiveWireNet, also known as The Phone Company Management Group; On Systems Technologies, with Tim Wetherald, Frank Tricamo, David Stafford as principals of On Systems, and The Phone Company of Arizona, LLP and its members.

As I stated, there are a number of other filings involved in that case but that is the primary case that we are dealing with.

This is the time and place set for the hearing in this case. The hearing in this matter had commenced in November and, due to some emergency circumstances, that matter had to be continued. And this is the time and date set for the commencement of the hearing.

However, on January 29th of this year there was a notice of filing of proposed settlement. And that was filed by Mr. Crockett on behalf of his clients, The Phone Company of Arizona, LLP. And it is my understanding that the parties would like some additional time to review

1 that notice of settlement to determine if that is the path  
2 which the parties would like to take.

3 That being the procedural history of how we  
4 got to this point, I will go ahead and take appearances  
5 now. And I will begin with Staff.

6 MS. SCOTT: Maureen Scott on behalf of  
7 Commission Staff.

8 ALJ DION: Okay. Also present in the hearing  
9 room today is counsel for Qwest. I will take your  
10 appearance at this time.

11 MS. DWYER: Theresa Dwyer from the law firm of  
12 Fennemore Craig on behalf of Qwest.

13 ALJ DION: I have a number of people on the  
14 phone today. And so I will start with Mr. Wetherald.

15 Mr. Wetherald, are you there?

16 MR. WETHERALD: Yes, I am Your Honor.

17 ALJ DION: Okay. Tim Wetherald is  
18 representing himself.

19 Also I understand, Mr. Johnson, you are also  
20 on the phone?

21 MR. JOHNSON: Yes, I am, Your Honor.

22 ALJ DION: Mr. Johnson is representing  
23 himself.

24 And, Mr. Tricamo, are you also on the phone?

25 MR. TRICAMO: Yes, I am.

1 ALJ DION: And Mr. Tricamo is also  
2 representing himself.

3 On behalf of Phone Company of Arizona?

4 MR. CROCKETT: Jeff Crockett appearing on  
5 behalf of The Phone Company of Arizona, limited liability  
6 partnership. And with me on the phone are Mr. Steve  
7 Petersen and Mr. Travis Credle.

8 ALJ DION: Okay, thank you.

9 I will go ahead and start with Staff. Staff,  
10 have you been able to review the notice of filing of  
11 proposed settlement?

12 MS. SCOTT: Judge, we have been able to just  
13 briefly review it at this point.

14 ALJ DION: Is it my understanding that you  
15 would like more time to go through this proposed  
16 settlement in order to determine whether or not this is  
17 the path that Staff would like to take?

18 MS. SCOTT: Yes. Staff would need more time  
19 to review it and to propose modifications to it, if that  
20 is the course of action we ultimately take.

21 ALJ DION: Okay. So I guess my question is,  
22 not my question, my statement is that Staff is not  
23 outright objecting to this proposed settlement at this  
24 time and wants to proceed to a hearing, rather it would  
25 prefer the appropriate amount of time to review the



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1 document, work on modifications, if any, that are needed  
2 with the other parties and then perhaps present something  
3 to the Commission or, in the alternative, if negotiations  
4 fail, proceed to a hearing.

5 MS. SCOTT: That's correct, Your Honor.

6 ALJ DION: Okay. What sort of time frame do  
7 you think you would need for something like this,  
8 Ms. Scott?

9 MS. SCOTT: Judge Dion, given -- I know the  
10 LLP had proposed two weeks. And I am just looking at the  
11 Legal Division calendar. I would note that February 16th  
12 falls on a holiday. I would say that given that and the  
13 other matters that are now pending involving the TRO, that  
14 Staff would probably need until about February 23rd.

15 ALJ DION: Okay. Mr. Wetherald, I am going to  
16 ask you the same sort of questions. Did you receive the  
17 notice of proposed settlement?

18 MR. WETHERALD: Yes, I have, Your Honor.

19 ALJ DION: Okay. Can you speak up for me,  
20 Mr. Wetherald?

21 MR. WETHERALD: Yes. Is this a little better?

22 ALJ DION: It is a little better.

23 Essentially is that your position as well, the  
24 same as Staff, that you would like the ability to review  
25 this document to determine if that is the course you would

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1 like to proceed with to discuss modification, if any, with  
2 the other parties? Is that essentially your stance as  
3 well?

4 MR. WETHERALD: Yes, it is.

5 ALJ DION: Okay. So you would be requesting a  
6 continuance in order to do that?

7 MR. WETHERALD: Yes, I would.

8 ALJ DION: Okay. Anything else to add,  
9 Mr. Wetherald?

10 MR. WETHERALD: Well, the only thing, when you  
11 took appearances, I think we ought to note that I also am  
12 representing On Systems Technology and The Phone Company  
13 Management Group.

14 ALJ DION: That is very correct.

15 Mr. Wetherald is correct, he is representing On Systems  
16 and The Phone Company Management Group in his capacity as  
17 a corporate officer of both of those entities.

18 Anything else, Mr. Wetherald?

19 MR. WETHERALD: No.

20 ALJ DION: Mr. Johnson.

21 MR. JOHNSON: Yes, Your Honor.

22 ALJ DION: Is that essentially the same  
23 position that you have, that you would like a continuance  
24 in order to review this document?

25 MR. JOHNSON: Yes, Your Honor. And just on a

1 note of scheduling, the February 23rd date would be  
2 preferable for me if there is going to be a rescheduled  
3 hearing. I could not be there the previous week.

4 ALJ DION: Okay. Mr. Wetherald, I forgot to  
5 ask that question of you. Is about a two-week time frame  
6 to review this material, maybe more, appropriate for you?

7 MR. JOHNSON: Sorry, Your Honor?

8 ALJ DION: I was asking Mr. Wetherald if two  
9 weeks or that amount of time was enough for him to review  
10 the documents and work with the other parties in this  
11 case.

12 MR. WETHERALD: Yes, it is, Your Honor.

13 ALJ DION: Mr. Tricamo, same set of questions.  
14 Have you received the notice of settlement?

15 MR. TRICAMO: Yes, I have.

16 ALJ DION: Do you think you will need about  
17 two weeks to review that document?

18 MR. TRICAMO: That would be fine.

19 ALJ DION: So you are requesting a continuance  
20 in this matter as well. Okay.

21 MR. TRICAMO: The 23rd would be okay.

22 ALJ DION: Okay. Mr. Crockett, essentially  
23 that was what was stated in your motion, so I am assuming  
24 that you are asking for a continuance for a period of time  
25 to review this document and reset the hearing in this

1 case.

2 MR. CROCKETT: Yes, Your Honor.

3 ALJ DION: Okay. Ms. Dwyer, Qwest have any  
4 input on this?

5 MS. DWYER: Just briefly.

6 I did receive this, but only through Staff at  
7 5:00 on Friday. And we were unaware that the scope of the  
8 hearing had changed to procedural conference.

9 For future filings of pleadings, I note that  
10 possibly the reason we didn't receive it is that the zip  
11 code for our law firm is incorrect on Mr. Crockett's  
12 notice of filing. It is not 85003 but 85012.

13 ALJ DION: Okay. Mr. Crockett, did you hear  
14 that?

15 MR. CROCKETT: I barely heard it. I think we  
16 have a mistake on the zip code, is that right?

17 ALJ DION: Yes.

18 MR. CROCKETT: I apologize for that.

19 ALJ DION: Yes. The zip code on the listing  
20 for Fennemore Craig is essentially the same as Qwest  
21 Corporation's, just down below, 85012.

22 Is that correct, Ms. Dwyer?

23 MS. DWYER: That is correct.

24 ALJ DION: So if we can change that,  
25 Mr. Crockett, I would appreciate it.

1 MR. CROCKETT: I will do that, Your Honor. My  
2 apologies to Qwest

3 MS. DWYER: Having received notice from Staff,  
4 we have not had a chance to review the settlement  
5 agreement. While we take no position on a continuance, we  
6 will participate gladly.

7 ALJ DION: Okay. I have also briefly reviewed  
8 the notice of proposed settlement just to try to figure  
9 out what sort of time frame would be necessary for the  
10 parties to, not only review this document, but also get  
11 together and potentially come up with a resolution that  
12 they would present before the Commissioners short of  
13 having a hearing and a proposed opinion and order being  
14 issued for the Commissioners' contemplation. And on doing  
15 that, I think that the two-week time frame is appropriate.

16 I think that this case certainly has gone on  
17 long enough and I think that the parties are familiar  
18 enough with each other to make, I think, great strides in  
19 a short period of time, especially with sort of a  
20 blueprint to start with as filed by Mr. Crockett.

21 I anticipate that the parties, however, will  
22 need some time to not only digest the information but work  
23 with each other in order to make a settlement that is  
24 acceptable to all parties.

25 However, I do realize that, while that may be

1 the goal of the parties at this time, that those  
2 negotiations may fall through. And as I have stated  
3 before, I believe this hearing needs to be done sooner  
4 than later. It should have been done in the fall of last  
5 year; however, as I stated, emergency circumstances  
6 intervened. And perhaps that was a good thing in that it  
7 gave the parties perhaps a new look at the case and  
8 additional time to get together and try to resolve this  
9 matter short of a hearing.

10 Based on that, I have determined that a final  
11 continuance in this case for the parties to resolve this  
12 is in the public interest, especially in light of the fact  
13 that I believe that this hearing would take at least three  
14 to four more days in order to conclude. And it appears  
15 likely that the parties, or at least it appears that there  
16 is a possibility that the parties may be able to resolve  
17 the issues among themselves without the added time it  
18 would take to not only commence a hearing in this matter  
19 but also the added time for all parties to review the  
20 proposed opinion and order.

21 And if this case were to go to hearing, I  
22 believe that it would probably be heard by the  
23 Commissioners sometime in the summer or closer to the  
24 summer in this year rather than the spring, which is what  
25 the proposal is for, if this case settles. And as I have

1 stated, I believe that this case should proceed quicker  
2 rather than the pace that we have been going at.

3 So I do find that it is in the public interest  
4 that, if the parties are able to resolve this, because it  
5 would significantly cut the time frame in the decision in  
6 this case, that a continuance should be granted.

7 My only thoughts are this, Ms. Scott. The  
8 deadline date for the next open meeting, the March open  
9 meeting is on the 17th. And I am leaning towards, because  
10 that is two weeks, I am leaning towards having, you know,  
11 the parties get together to either finalize negotiations  
12 and present something to the Commission with a deadline  
13 date of 17th rather than moving towards the following open  
14 meeting, which I believe would be the end of March instead  
15 of the beginning of March, on the other hand, and I am  
16 looking to schedule this hearing to start on  
17 February 24th, if negotiations fail, I am looking at the  
18 24th which is a Tuesday, the 25th, and the 26th. And the  
19 reason for that is just quite simply the hearing schedule.  
20 If we do not get this matter scheduled prior to March,  
21 then the hearing calendar for March, April, and May is  
22 just quite simply atrocious.

23 If, however, Staff feels that it would be more  
24 productive to allow the parties to have until the 23rd, I  
25 suppose that it could still be on that March open meeting,

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1 if everyone waived the, you know, the ten days of time for  
2 the exceptions. And I would assume they would do so  
3 because they are all signing off on a consent order so to  
4 speak. So I am willing to listen to that, but essentially  
5 that's what I am debating, really the situation of, you  
6 know, the 17th versus the 23rd.

7 If I allow the parties until the 23rd and  
8 things crumble, and we have a hearing on the 24th, I don't  
9 know if that gives the Hearing Division enough time to  
10 adequately prepare and have the rooms ready for the  
11 following week.

12 MS. SCOTT: Your Honor, I should have been a  
13 little clearer before. Actually, giving us until the 17th  
14 to see if we can come to agreement is fine with Staff.  
15 What I was speaking about, February 23rd, I was actually  
16 speaking as to the date the hearing would recommence if we  
17 could not reach agreement.

18 ALJ DION: Okay. Thank you, Ms. Scott. I had  
19 interpreted, because of Staff's schedule, that they needed  
20 until the 23rd to review that.

21 Okay. Then, based upon that then, I think  
22 that would be the wiser course of action; although, as I  
23 have stated, if the 17th comes and goes and the parties  
24 are extremely close, then they could perhaps even get it  
25 on the open meeting, the March open meeting by waiving



1 some of the time rules to file exceptions. But I think we  
2 would like to -- I would assume, though, that the parties  
3 prefer to either know this matter is settled or that we  
4 were proceeding to a hearing at this point.

5 Why don't we do that. Why don't we set the  
6 time line for the 17th. So I will issue a procedural  
7 order issuing that the parties shall review the notice of  
8 filing and get together and determine whether or not this  
9 matter will be resolved pursuant to a settlement by  
10 February 17th. And that settlement should be filed in  
11 this docket as an open meeting item, I believe.

12 Ms. Scott, do you think that would be  
13 possible?

14 MS. SCOTT: I guess if that is your  
15 preference, Your Honor, we can file it that way.

16 ALJ DION: Well, I suppose that if, again, if  
17 it is, if you come to a difficulty in getting the  
18 settlement into a hard-copy for the Commissioners' review,  
19 but at least a settlement is reached on the 17th, that at  
20 least again that hard copy proposed settlement could be  
21 filed, you know, on the 18th and 19th, again with the  
22 parties waiving time for the exceptions.

23 But, again, I would like to see this matter  
24 resolved. If it is going to be settled, I would like to  
25 see it resolved in the March open meeting rather than

1 April or May.

2 So I think that my order will be that the  
3 parties shall review the notice of settlement, confer with  
4 each other and determine whether or not they are going to  
5 enter into settlement agreement by the 17th and have that  
6 settlement agreement filed with the Commission on the  
7 17th. If not, we will, again, commence at 9:00 on  
8 February -- it is Tuesday, it is not a Monday, it is a  
9 Tuesday -- February 24th and then go ahead and reserve the  
10 25th and the 26th and perhaps the 27th in case we needed  
11 that for additional hearing time.

12 Does that sound, does that seem to work with  
13 Staff's schedule, Ms. Scott?

14 MS. SCOTT: Yes, Your Honor, that should work.

15 ALJ DION: Okay. Mr. Crockett, have you  
16 understood kind of my rambling?

17 MR. CROCKETT: Your Honor, I would never  
18 accuse you of rambling.

19 ALJ DION: You didn't, I did.

20 MR. CROCKETT: But I did understand. I did  
21 understand it.

22 ALJ DION: Okay. Mr. Johnson, did you  
23 understand what I said?

24 MR. JOHNSON: Yes, Your Honor.

25 ALJ DION: Mr. Wetherald?

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1 MR. WETHERALD: Yes, I did.

2 ALJ DION: Mr. Tricamo?

3 MR. TRICAMO: Yes, I did.

4 ALJ DION: Any objection from anyone on the  
5 phone from that time schedule?

6 Hearing silence I am going to take that as  
7 none.

8 Ms. Dwyer, anything to add?

9 MS. DWYER: No.

10 ALJ DION: So essentially, Ladies and  
11 Gentlemen, this matter will be continued until 9:00 on  
12 February 24th. However, in the interim, it is my  
13 understanding that the parties are going to get together,  
14 and when I say parties, that does include Qwest, they are  
15 an intervenor in this case, the parties are going to get  
16 together and determine whether or not a settlement is  
17 going to be reached. They will do so and have something  
18 filed by the 17th of February. If nothing is filed, then  
19 assume that the hearing is going to take place again on  
20 February 24th at 9:00 a.m. And I believe that I don't  
21 have anything else.

22 Ms. Scott, anything?

23 MS. SCOTT: No, Your Honor.

24 ALJ DION: Ms. Dwyer?

25 MS. DWYER: No.

1 ALJ DION: Mr. Crockett, anything else?

2 MR. CROCKETT: Nothing, Your Honor.

3 ALJ DION: Mr. Johnson?

4 MR. JOHNSON: Your Honor, nothing.

5 ALJ DION: Mr. Wetherald?

6 MR. WETHERALD: No, Your Honor.

7 ALJ DION: Mr. Tricamo?

8 MR. TRICAMO: No.

9 ALJ DION: Well, good luck, Ladies and  
10 Gentlemen. I look forward to seeing something from you  
11 hopefully on the 17th. If not, I will see you all here in  
12 the Hearing Division in the Arizona Corporation Commission  
13 on February 24th at 9:00 a.m.

14 Good day.

15 (The proceedings were recessed at 9:36 a.m.)

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1 STATE OF ARIZONA )  
 ) ss.  
2 COUNTY OF MARICOPA )

7 I, COLETTE E. ROSS, Certified Court Reporter No.  
8 50658 for the State of Arizona, do hereby certify that the  
9 foregoing printed pages constitute a full, true and  
10 accurate transcript of the proceedings had in the  
11 foregoing matter, all done to the best of my skill and  
12 ability.

14 WITNESS my hand this 9<sup>th</sup> day  
15 of February, 2004.

19 Colette E. Ross  
20 COLETTE E. ROSS  
21 Certified Court Reporter  
Certificate No. 50658